

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CRJ 17-01 Community Highway Safety Pilot Program
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	13 Y, 2 N	Merlin	White

SUMMARY ANALYSIS

In Florida, a County Sheriff is a state constitutional officer, elected to a four-year term, whose powers and duties are prescribed by statute. Generally, a Sheriff is considered the chief law enforcement officer of a county and has countywide jurisdiction to execute warrants, serve process, and make arrests. In contrast, the Florida Highway Patrol ("FHP") within the Department of Highway Safety and Motor Vehicles ("DHSMV") is a creature of statute and has statewide jurisdiction for its duties, as described in ch. 321, F.S.

The bill creates s. 321.025, F.S., to establish the Community Highway Safety Pilot Program within the DHSMV to assess the viability and effectiveness of transferring duties from FHP to the Sheriffs. The bill provides that the Pilot Program is to be operated in Pinellas and Polk Counties and implemented by contract. The bill:

- Authorizes, but does not require, the Sheriffs to enter into a contract with FHP.
- Requires FHP to enter into a contract with the Sheriffs if requested to do so.

The bill provides that if the parties enter into a contract, the contract must specify, at a minimum the:

- Duties to be performed by the Sheriff within the county's boundaries that currently performed by FHP; and
- The amount to be paid by FHP to the Sheriff for the performance of duties delineated in the contract.

The bill provides that as a condition of each contract:

- The Sheriff must agree to employ FHP troopers who serve within the county unless, at the trooper's discretion, the trooper chooses to relocate and remain with FHP or chooses to pursue other employment opportunities.
- Payments to a Sheriff must be less than FHP's cost to provide the same services. The amount paid pursuant to the contract for Pinellas County may not exceed \$2,800,117 annually and for Polk County may not exceed \$3,167,447 annually.
- Property and fixed capital outlay under the control of FHP must not be leased or otherwise transferred to a Sheriff.

The bill creates an appropriation category entitled, "Community Highway Safety Pilot Program," and provides that, upon executing a contract, FHP shall submit, and the Governor shall recommend the approval of one or more budget amendments to transfer from FHP the amount of funds obligated from the FHP to a county into the Pilot Program appropriation category.

The bill provides that the Pilot Program expires on July 1, 2019, unless reviewed and saved from repeal by the Legislature.

If contracts are entered with both Pinellas and Polk Counties, the bill will have up to a fiscal impact of up to \$5,967,564 on FHP expenditures and a corresponding revenue increase for the two counties. Please see "FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT," *infra*.

The bill provides an effective date of July 1, 2017.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: pcb01a.CRJ

DATE: 3/9/2017

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Constitutional and Statutory Authority of County Sheriff

In Florida, the “[S]heriff is a constitutional officer and a county administrative officer whose powers and duties are prescribed by statute like other county administrative officers, and he possesses such authority as has been expressly granted by statute or is necessarily implied in order to carry out some function expressly imposed or authorized by statute.”¹

Pursuant to the Florida Constitution, a County Sheriff is elected for a term of four years.² Sixty-six of Florida's 67 counties have elected Sheriffs as their chief law-enforcement officers.³ Chapter 30, F.S., is the corresponding chapter pertaining to the County Sheriff. Section 30.072(5), F.S., provides that the Sheriff is “the constitutional officer elected in accordance with this chapter.”⁴ Section 30.072(2), F.S., in turn, provides that the Sheriff can appoint a deputy sheriff, who is “a law enforcement officer . . . certified under chapter 943.”⁵

A Sheriff has countywide jurisdiction as set forth in s. 30.15, F.S. The powers, duties, and obligations⁶ of the Sheriffs include:

- Executing all process of the Supreme Court, circuit court, county court, and board of county commissioners, to be executed in their counties;
- Executing such other writs, processes, warrants, and other papers directed to it, as may come to its hands to be executed in their counties;
- Attending all terms of the circuit court and county court held in their counties;
- Executing all orders of the board of county commissioners of their counties, for which services they shall receive such compensation, out of the county treasury, as said boards may deem proper;
- Being conservator of the peace in their counties;
- Suppressing tumults, riots, and unlawful assemblies in their counties with force and strong hand when necessary;
- Apprehending, without warrant, any person disturbing the peace, and carrying that person before the proper judicial officer, that further proceedings may be had against him or her according to law;
- Having authority to raise the power of the county and command any person to assist them, when necessary, in the execution of the duties of their office;
- Being, ex officio, timber agents for their counties; and
- Performing such other duties as may be imposed upon it by law.

¹ 06-06 Fla. Op. Att’y Gen. (2006).

² FLA. CONST. art. VIII, s. 1(d) (“There shall be elected by the electors of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court; except, when provided by county charter or special law approved by vote of the electors of the county any county officer may be chosen in another manner therein specified, or any county office may be abolished when all the duties of the office prescribed by general law are transferred to another office.”); *see also* FLA. CONST. art. V, s. 3(c) (providing that the Marshal of the Florida Supreme Court “shall have the power to execute the process of the court throughout the state, and in any county may deputize the sheriff or a deputy sheriff for such purpose.”); FLA. CONST. art. V, s. 4(c) (providing similar authority for the marshals of the district courts of appeal to deputize a sheriff or sheriff’s deputy for such a purpose).

³ The sole exception is Miami-Dade County, which appoints a Director to the Miami-Dade Police Department. *See* website for the Florida Sheriff’s Association, available at <https://www.flsheriffs.org/sheriffs/directory/> (last viewed Feb. 13, 2017). The current Director of the Miami-Dade Police Department is Juan J. Perez. *See* Website for the Miami-Dade Police Department, available at <http://www.miamidade.gov/biographies/police.asp> (last viewed Mar. 2, 2017).

⁴ s. 30.072(5), F.S.

⁵ s. 30.072(2), F.S.

⁶ Although ch. 30, F.S., is the chapter generally pertaining to County Sheriffs, section 30.15, F.S. specifically deals with the powers, duties, and obligations of that position.

Florida Highway Patrol

Unlike the Sheriffs, the Florida Highway Patrol (“FHP”) is a creature of statute. Specifically:

- The authority and responsibility afforded the Director of FHP is defined in s. 321.02, F.S.
- The functions, principles and duties of FHP members are defined in s. 321.05, F.S.
- FHP is a division of the Department of Highway Safety and Motor Vehicles (“DHSMV”), whose Executive Director⁷ is accountable to the Governor and cabinet, as provided for in Ch. 20, F.S.⁸

FHP has statewide territorial jurisdiction as set forth in s. 321.05, F.S. The duties, functions, and powers of patrol officers (“troopers”) include:

- Being “conservators of the peace” and “law enforcement officers of the state.” This includes:
 - The common-law right to arrest a person who, in the presence of the trooper, commits a felony, or an affray, or a breach of the peace constituting a misdemeanor;
 - The “full power” to bear arms;
 - The authority to apprehend a person who commits an unlawful act over which FHP has jurisdiction and deliver that person to the Sheriff;
 - The same protections and immunities as other law enforcement officers (“LEOs”); and
 - The authority to apply for, serve, and execute search warrants, arrest warrants, *capias*, and other process of the court.
- Patrolling state highways and regulating, controlling, and directing traffic movements thereon;
- Enforcing all laws that regulate vehicles, traffic, travel, and public safety on public highways and that protect the public highways and public property thereon.
- Apprehending fugitives from justice;
- Investigating traffic accidents and reported thefts of vehicles;
- Seizing contraband or stolen property on or being transported on the highways.
- Assisting other LEOs to quell mob riots, guard prisoners, and police disaster areas; and
- Exercising on a statewide basis the same arrest authority granted to local and other state LEOs in ch. 901, F.S.⁹

Currently, section 321.02, F.S., provides the authority and responsibility that is afforded to the Director of FHP. Section 321.02, F.S., also requires FHP to:

- Set up and promulgate rules and regulations by which personnel are to be examined, employed, trained, located, suspended, reduced in rank, discharged, recruited, paid and pensioned, subject to civil service provisions;
- Enter into contracts to make available property for the placement of new facilities by wireless providers of mobile services;
- Purchase, sell, trade, rent, lease and maintain all necessary equipment, uniforms, motor vehicles, communication systems, housing facilities, office space, and perform any other acts necessary for the proper administration and enforcement of that chapter;
- Prescribe a distinctive uniform and emblem to be worn by its members; and
- Prescribe distinctive colors for use on its motor vehicles and motorcycles.

Effect of the Bill

The bill creates s. 321.025, F.S., to establish the Community Highway Safety Pilot Program (“the Pilot Program”) for the purpose of assessing the viability and effectiveness of transferring duties from FHP to the Sheriffs.

⁷ The Executive Director of DHSMV is currently Terry L. Rhodes. See <https://www.flhsmv.gov/about/directors-welcome/> (last viewed Mar. 3, 2017). The Director of the Florida Highway Patrol is Colonel Gene Spaulding. See <https://www.flhsmv.gov/about/departments-overview/> (last viewed Mar. 3, 2017).

⁸ See Florida Highway Patrol (“FHP”) Policy Manual 4.01, Organizational Structure, Rev. Dec. 17, 2015, available at <https://www.flhsmv.gov/fhp/Manuals/0401.pdf> (last viewed Feb. 14, 2017).

⁹ s. 321.05, F.S.

The bill provides that the Pilot Program is to be operated in Pinellas and Polk Counties and implemented by contract. The bill:

- Authorizes, but does not require, the Sheriffs of Pinellas and Polk Counties, to enter into a contract with FHP.
- Requires FHP to enter into a contract with the Sheriffs of those counties if requested to do so.

The bill provides that if FHP and the Sheriffs enter into a contract, the contract must specify, at a minimum:

- The duties to be performed by the Sheriff within the county's boundaries which are currently performed by FHP. The duty to patrol roadways within the county and investigate traffic accidents occurring within the county must be transferred from FHP to the Sheriff of the county, but only within the boundaries of the Sheriff's respective county; and
- The amount to be paid by FHP to the Sheriff for the performance of duties delineated in the contract.

The bill provides that as a condition of each contract:

- The Sheriff must agree to employ FHP troopers who serve within the county unless, at the trooper's discretion, the trooper chooses to relocate and remain with FHP or chooses to pursue other employment opportunities.
- Payments to a Sheriff must be less than FHP's cost to provide the same services. The amount paid pursuant to the contract for Pinellas County may not exceed \$2,800,117 annually and for Polk County may not exceed \$3,167,447 annually.
- Property and fixed capital outlay under the control of FHP must not be leased or otherwise transferred to a Sheriff.

The bill creates an appropriations category entitled, "Community Highway Safety Pilot Program." The bill provides that upon executing a contract, FHP shall submit, and the Governor shall recommend the approval of one or more budget amendments to transfer from the Salaries and Benefits appropriation in FHP the amount of funds obligated from the FHP to a county for a contract signed into the Pilot Program appropriation category.

The bill provides that an amendment that transfers appropriations from the Salaries and Benefits appropriation category shall place a commensurate number of full-time equivalent positions in reserve. Such amendments shall be subject to the notice, review, and objection provisions of s. 216.177, F.S., pertaining to appropriations acts.

The bill provides that the Pilot Program expires on July 1, 2019, unless reenacted by the Legislature.

The bill provides an effective date of July 1, 2017.

B. SECTION DIRECTORY:

Section 1. Amends s. 321.02, F.S., pertaining to powers and duties of department, highway patrol.

Section 2. Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: This bill does not appear to have any impact on state revenues.
2. Expenditures: If contracts are executed under the bill, there will be an impact on state expenditures for Salaries and Benefits. The bill limits the amount of the contract for Pinellas County to no more than \$2,800,117 annually and for Polk County to no more than \$3,167,447 annually.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: If contracts are executed under the bill, there will be an impact on local revenues in Pinellas County in an amount up to \$2,800,117 annually and in Polk County in an amount up to \$3,167,447 annually.
2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.
2. Other:
None.

B. RULE-MAKING AUTHORITY: This bill does not appear to create the need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A.